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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,168	08/18/2003	Glen S. Axelrod	TFH028U	3595
32047	7590	09/22/2006		
GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101				
			EXAMINER SMITH, KIMBERLY S	
			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,168

Applicant(s)

AXELROD, GLEN S.

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/18/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>01/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: chew toy “10”. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-10, 12-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Suchowski et al., US Patent 6,415,741 (Suchowski).

Suchowski discloses an animal chew toy (100) comprising a body portion (300) and first and second ends (325) and an end piece (210) having a hardness greater than the first hardness of the

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body portion, wherein the end piece protects the edge section of the body portion (as seen in Figure 1), wherein the end piece protects the edge section by overlying the edge section, wherein the outer layer comprises an elastomer of natural rubber (column 3, line 38), wherein the first and second end pieces comprise a thermoplastic material (column 2, line 66), wherein the first and second pieces comprise a nylon material (column 2, line 67), wherein the body portion comprises a core covered by the outer layer (viewed in Figure 3), wherein at least one of the body and end pieces includes a plurality of conical protrusions, wherein the outer layer has a hardness on the Shore A scale and the end pieces have a hardness on the Shore D scale and wherein the entirety of the body portion including the outer layer is made of an elastomer material.

4. Claims 1-6, 10, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Rourke, US Patent 5,174,243.

O'Rourke discloses an animal chew (10) comprising a body portion (12) and an end piece (14) having a hardness greater than the first hardness of the body portion, wherein the end piece protects the edge section of the body portion by completely overlying the edge section, wherein the end piece is configured to engage the body portion comprises an opening (at 16), wherein the opening has a diameter less than the diameter of the body portion (as is viewed in Figure 1), wherein the outer layer of the body portion comprises an elastomer, wherein the body portion comprises a core at least partially covered by the outer layer (as viewed in Figure 4), wherein the end piece includes a plurality of protrusions (i.e. the condyles at 14), wherein the body portion has a hardness on the shore A scale and the end pieces have a hardness on the Shore D scale.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suchowski et al., US Patent 6,415,741.

Suchowski discloses the invention substantially as claimed. However, Suchowski does not disclose that the core comprises a nylon material however it discloses that a resilient polymer is to be used. It would have been within the skill of an artisan in the art to select any known resilient polymer inclusive of nylon for the core material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as the applicant has not stated that the use of nylon is for any particular purpose or solves any stated problem not accomplished with other resilient polymer materials. *In re Lesin*, 125 USPQ 416.

7. Claims 8, 9, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke, US Patent 5,174,243.

O'Rourke discloses the invention substantially as claimed. However, O'Rourke does not positively disclose the first and second end pieces are thermoplastic, the core is nylon or the entire device is elastomeric. However, it would have been obvious to one having ordinary skill in the art to use a thermoplastic inclusive of nylon as the end pieces, the core being formed of nylon and the entire device being elastomeric since it has been held to be within the general skill

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of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and as the applicant has not stated that the use of nylon or the entire device being elastomeric is for any particular purpose or solves any stated problem not addressed by the prior art as these are known materials for the composition of chew toys. *In re Leshin*, 125 USPQ 416.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke, US Patent 5,174,243 as applied to claim 1 above, and further in view of Klaus et al., US Patent 6,676,481 (Klaus).

O'Rourke discloses the invention substantially as claimed including the body portion being fittingly inserted into the end piece. However, O'Rourke does not disclose the first and second end pieces and body portion including at least one cooperating hole for the insertion of a dowel to attach the end pieces to the body portion. Klaus teaches the use of a dowel inserted into two connecting portions of a toy for providing a secure attachment of the two pieces together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the corresponding hole and dowel to fasten the end pieces to the end portion of the body portion as taught by Klaus with the invention of O'Rourke so as to provide a secure coupling between the two components.


Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Handelsman et al. (US 7,063,044), I'Rourke (US 5,148,770).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kimberly S Smith
Examiner
Art Unit 3644

kss